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IDAHO PERSONNEL COMMISSION
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IDAHO PERSONNEL COMMISSION

STATE OF IDAHO

)	
)	
PAUL DUNCAN,)	
)	
Appellant,)	
)	IPC NO. 97-07
)	
vs.)	
)	
IDAHO STATE UNIVERSITY,)	DECISION AND ORDER ON
)	MOTION TO DISMISS
)	
Respondent.)	
_____)	

I.

INTRODUCTION

THIS MATTER comes before the Commission on Idaho State University's (ISU) Motion to Dismiss. ISU asks this Commission to dismiss the Petition for Review filed by Appellant Paul Duncan for lack of jurisdiction or because the issue has become moot.

Neither party appeared, and the matter was decided on the pleadings. Respondent ISU was represented by its counsel of record, J. Kelley Wiltbank, Pocatello, Idaho. Appellant Duncan represented himself.

Based upon a review of ISU's motion, and the record, and for the reasons set forth below, ISU's Motion to Dismiss is GRANTED:

1. Appellant Duncan filed a grievance on February 7, 1997, alleging that Respondent ISU had failed to provide him affirmative action in employment advancement to which he was entitled under the Vietnam Era Veterans' Readjustment Assistance Act of 1974.

2. Following impartial review and a final decision by ISU President Richard Bowen, Duncan appealed to the Personnel Commission.

3. ISU filed a motion to dismiss for lack of jurisdiction which was granted by the Hearing Officer.

4. Duncan petitioned for review and the matter was scheduled for hearing on November 14, 1997. ISU filed a brief asking the Commission to uphold the decision of the Hearing Officer.

5. On Wednesday, November 5, 1997, ISU filed a motion to dismiss Duncan's appeal for the reasons that Duncan had tendered his resignation from his classified position in order to take an unclassified promotional position with ISU at its Idaho Falls campus. ISU urged that Duncan's resignation requires a dismissal of the appeal either because the Commission lacks jurisdiction over an exempt employee, or because the issue raised in the initial grievance is now moot.

6. Appellant Duncan was contacted by telephone at approximately 11:30 a.m. by counsel for the Commission, Rinda Just. Duncan advised Deputy Attorney General Just that he "concurred" in ISU's motion, that he would not appear either by telephone or in person at the scheduled hearing, and that he considered the appeal concluded.

7. Duncan has now received a promotion to an unclassified position which was the impetus for the original grievance. He has expressed his concurrence in the Respondent's Motion to Dismiss, and considers the matter concluded.

8. Because the matter before the Commission on Petition for Review is now moot, there is no reason for the Commission to reach the additional grounds for dismissal raised in Respondent's Motion to Dismiss.

IT IS HEREBY ORDERED that the Petition for Review filed by Paul Duncan in the above-entitled matter is DISMISSED.

DATED this 14th day of November 1997.

BY ORDER OF THE
IDAHO PERSONNEL COMMISSION

/s/ _____
Sherry Dyer, Acting Chair

/s/ _____
Peter Boyd

/s/ _____
Ken Wieneke

/s/ _____
Don Miller

STATEMENT OF APPEAL RIGHTS

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. I.C. § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

- (1) That the findings of fact are not based on any substantial, competent evidence;
- (2) That the commission has acted without jurisdiction or in excess of its powers;
- (3) That the findings of fact by the commission do not as a matter of law support the decision.

I.C. § 67-5318

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing DECISION AND ORDER ON MOTION TO DISMISS in *Duncan v. Idaho State University*, IPC No. 97-07, was delivered to the following parties by the method stated below on the 14th day of November, 1997.

FIRST CLASS MAIL

Paul Duncan
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Idaho State University
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/s/ _____
Val Rodriguez

